



Region 2
3201 Spurgin Road
Missoula, MT 59804

January 29, 2019

Dear Interested Citizen:

Thank you for your thoughtful reviews and comments on a proposal by Montana Fish, Wildlife and Parks (FWP) to accept assignment (delegation) of the "right of public access" component of a conservation easement (CE) to be held by Five Valleys Land Trust (FVLT) on the Buxbaum-Boulder Creek Ranch (Buxbaum Ranch) in Granite County. The Buxbaum Ranch has diverse wildlife habitat including native grasslands, forested draws, pocket wetlands, and aspen stands. The CE on this property would protect important big game winter range, a variety of habitats for other game and for nongame wildlife species including Species of Concern, and public recreation opportunities on 1,193 acres.

FVLT is purchasing a conservation easement on the Buxbaum Ranch to protect the wildlife habitat and agriculture values of the land in perpetuity. FVLT is seeking to assign the management of the public hunting access portion of the CE to FWP. The Upper Clark Fork River Basin Remediation and Restoration Advisory Council voted to recommend partial funding from the Montana Department of Justice's Natural Resource Damage Program (NRDP) to complete this proposed CE project. The USDA Natural Resources Conservation Service is providing additional funding to purchase this CE through its Agricultural Conservation Easement Program. No FWP funds would be used to acquire the proposed CE; therefore, the proposed action is for FWP to accept the assignment of the right of public access in perpetuity, as further set forth in the CE to be held by FVLT.

Enclosed is a decision document in which FWP explains its rationale for recommending that the Fish & Wildlife Commission approve this project as proposed. Upon completion of the public involvement process, FWP accepts the draft environmental assessment (EA) as final. The decision document also includes all public comments received during the public comment period on the proposed public hunting access assignment.

FWP will request approval for this proposal at the regularly scheduled Fish & Wildlife Commission meeting on February 13, 2019 in Helena. This meeting is open to the public, as are other regularly scheduled Commission meetings.

Please feel free to contact me at 406-542-5500 with any questions you may have. Thank you for your interest and participation.

Sincerely,

Randy Arnold
Regional Supervisor

RA:sr

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Decision Notice for the Draft Environmental Assessment for the Buxbaum-Boulder Creek Ranch Public Access in Perpetuity Conservation Easement

Prepared by:
Montana Fish, Wildlife & Parks
Region 2 Wildlife
3201 Spurgin Road, Missoula, MT 59804
January 2019

PROPOSAL SUMMARY

Montana Fish, Wildlife and Parks (FWP) proposes to accept assignment (delegation) of the “right of public hunting access” component of a conservation easement (CE) to be held by Five Valleys Land Trust (FVLT) on the Buxbaum-Boulder Creek Ranch (hereafter, Buxbaum Ranch) in Granite County. The Buxbaum Ranch is located just northwest of Maxville (about halfway between Drummond and Philipsburg) and has diverse wildlife habitat including native grasslands, forested draws, pocket wetlands, and aspen stands. The CE on this property would protect important big-game winter range and a variety of habitats for nongame wildlife species including Montana Species of Concern, as well as provide public hunting opportunities on 1,193 acres. FVLT is seeking to assign the management of the public hunting access portion of the CE to FWP. The Upper Clark Fork River Basin Remediation and Restoration Advisory Council voted to recommend partial funding from the Montana Department of Justice Natural Resource Damage Program (NRDP) to complete this proposed CE project. The USDA Natural Resources Conservation Service is providing additional funding to purchase this CE, through its Agricultural Conservation Easement Program. No FWP funds would be used to acquire the proposed CE; therefore, the proposed action is for FWP to accept the assignment of the right of public hunting access, in perpetuity, as set forth in the CE to be held by FVLT.

DESCRIPTION OF PROPOSED ACTION

Alternative B: Acquisition of the Public Hunting Access Rights in the Buxbaum-Boulder Creek Ranch Conservation Easement

FWP proposes to secure public hunting access in perpetuity on 1,193 acres of grassland, forest, and wetland habitat near Maxville, Montana, which are owned by the Buxbaum family. The proposed grant of public hunting access would not require any purchasing costs from FWP. If selected and implemented, this proposed action would bind FWP to implement, review, and update a *Public Hunting Access Plan* for the subject properties annually, or up to every five years, in cooperation with the landowner. Following guidance in the conservation easement and the *Public Hunting Access Plan*, FWP would be responsible for verifying that the landowner offers the opportunity for at least 50 hunter days of fair and equitable, free public-hunting access each year into the future, excluding the landowner’s family and employees. FWP would provide an enforcement presence consistent with its presence on other conservation easements, Block Management Areas, Fishing Access Sites, and similar points of public access on or surrounded by private lands.

The Montana Department of Justice’s Natural Resource Damage Program (NRDP) and the USDA Natural Resources Conservation Service (NRCS) are working with FVLT to protect the above-referenced 1,193 acres by purchasing a perpetual conservation easement (CE; to be held by FVLT) on the Buxbaum property. As part of this process, NRDP and FVLT would work with FWP to secure a public hunting access provision as part of the FVLT conservation easement. FWP proposes to accept FVLT’s assignment of the easement provision pertaining to public hunting access because FWP is the qualified organization best equipped to manage, monitor, and enforce the access terms in perpetuity, consistent with the overall intent of the FVLT conservation easement. FWP has extensive experience in acquiring and managing public access provisions in perpetual conservation easements. FVLT would retain sole and full responsibility as the Grantee for monitoring and enforcing compliance with all other terms of the conservation easement, beyond the public hunting access component.

The subject property is in the foothills of the Flint Range in the Clark Fork River Basin of western Montana. The Buxbaum Ranch contains native montane grasslands, a diversity of wetland and riparian habitats, and a mosaic of forested draws that are connected to larger reaches of wildlife habitat in the Flint Creek Range. The property enhances access to nearby Beaverhead-Deerlodge National Forest lands. The ranch has one existing homesite along Highway 1 and a small flood-irrigated pasture located east of Highway 1. Other than the single homesite, the property provides open space and diverse habitat for wildlife.

The Buxbaum-Boulder Creek conservation easement project is adjacent the NRDP Lower Flint Creek Priority Landscape Area identified in the *Upper Clark Fork River Basin (UCFRB) Aquatic & Terrestrial Resources Restoration Plan* (2012)¹. The Buxbaum Ranch is classified as Priority Three under the NRDP plan, recognizing the importance of “maintaining or improving wildlife species diversity, natural ecological functions, and habitat connectivity in grassland, forest, and riparian ecological systems.” The property is also located within the Upper Clark Fork-Garnets Tier II Terrestrial Focus Area for FWP’s *Montana’s State Wildlife Action Plan* (2015)².

The Buxbaum Ranch is comprised of montane grasslands that provide winter range to support mule deer and elk, as well as a variety of nongame bird and small mammal species. Wetlands on the ranch include three ponds that support amphibian and reptile species as well as a variety of songbirds and waterfowl. These small ponds are likely important stopover areas for migratory birds between the wetland complexes of the Blackfoot Valley and the upper Deer Lodge Valley. Aspen stands on the property support a high biodiversity of nongame species and further support big game species such as moose and white-tailed deer. Overall, the diversity of habitats on the property supports a variety of wildlife species and provides an assortment of hunting opportunities including big game and upland game birds.

NRDP and FVLT have worked jointly with FWP to secure and develop a public hunting access plan for public hunting access on the Buxbaum Ranch. The intent of the conservation easement is to protect this property’s wildlife habitat and public recreational values while keeping the property in private ownership and management. The private property would remain a working ranch and retain agricultural and cultural values in Granite County. Protecting this property with a conservation easement would conserve native grassland, forest, and wetland habitats and provide public hunting access to wildlife resources.

ALTERNATIVES CONSIDERED TO THE PROPOSED ACTION

Alternative A: No Action

Under the No Action Alternative, FWP would not accept assignment of the rights for public hunting access on the Buxbaum Ranch from FVLT’s conservation easement. This would be expected to result in a failed CE project (i.e., the CE would not be purchased and finalized, due to lack of a public hunting access component in the CE as desired by NRDP, an essential funding institution). In that event, the opportunity to secure perpetual public hunting access could be lost.

MONTANA ENVIRONMENTAL POLICY ACT PROCESS

FWP is required to assess impacts to the human and physical environment under the Montana Environmental Policy Act (MEPA). The Buxbaum-Boulder Creek Public Access Conservation Easement proposal and its effects were documented by FWP in a Draft Environmental Assessment (EA).

PUBLIC REVIEW PROCESS

A draft EA for the proposed project was made available for public review and comment for a 30-day period from December 19th, 2018 through January 18, 2019. The EA was also posted on FWP’s web site (<http://fwp.mt.gov>, under “Recent Public Notices”) during that same period, and comments could be made

¹ Available at <https://dojmt.gov/wp-content/uploads/Final-AT-Restoration-Plan-Combined.pdf> Accessed 18 Dec 2018.

² Available at <http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html> Accessed 18 Dec 2018.

directly on the EA's webpage or submitted to Region 2 FWP via mail or email. Legal notices were published twice each in the *Independent Record* (Helena; December 19 & 31, 2018), *Missoulian* (December 19 & 31, 2018), *Montana Standard* (Butte; December 19 & 31, 2018), *Philipsburg Mail* (December 20, 2018 & January 3, 2019), and *Silver State Post* (Deer Lodge; December 19, 2018 & January 2, 2019) newspapers. A statewide News Release was prepared and distributed December 28, 2018 to a standard list of media outlets interested in FWP Region 2 issues. FWP distributed 31 printed copies of the EA, and 45 email-notifications of the EA's availability, to adjacent landowners and interested individuals, groups, and agencies.

A public hearing to explain the project, answer questions, and take public comment was held in Drummond on January 8, 2019 at 6:30 p.m. at the Drummond Community Center (54 East Broad Street).

PUBLIC COMMENT RECEIVED

Public Comment

The Appendix is a compilation of all comments (in their entirety) received during the public comment period. FWP received 11 written comments via email from members of the public during the public review period (Appendix, Commenters #1-9, 10a, 11). These 11 comments represented 7 people (1 each from Anaconda, Drummond, Emigrant, Eureka, Georgetown Lake, Hamilton, and Helena, Montana) and 4 sports persons groups (Anaconda Sportsman's Club [ASC]; Hellgate Hunters & Anglers, Missoula; Montana Chapter Backcountry Hunters & Anglers, Missoula; and Montana Wildlife Federation, Helena).

Public hearing

Six people attended the public hearing (3 from Drummond, 2 from Anaconda, and 1 from Clinton). Two people from Anaconda, both representing ASC, offered public testimony at the public hearing (Appendix, #10b, 10c).

Summary of All Comments

Of the total 11 commenters³:

- 9 supported the proposal; supporters included 5 people and all 4 sportspersons groups.
- 2 commenters did not clearly indicate support or opposition to the proposal:
 - 1 commenter (Appendix, #5) stated it appeared to be good for hunting access, but wanted clarification if recreational access such as hiking would be allowed in addition to hunting; and
 - 1 commenter (Appendix, #6) was generally dissatisfied with the conservation easement (apparent problems with the Ranch being paid for the CE, the hunting quality, and assertion that subdivision was not really a concern to area lands), but this commenter did not specify support or opposition to the proposal under consideration for this EA (i.e., FWP accepting the public hunting access component of FVLT's CE).

Comments in Support of the Proposed Acquisition Included:

- I see no reason not to accept this gift of assignment, and lots of reason to accept it!!!!
- Great project! I am proud of the hard work all of these organizations and FWP have done to continue enhancing Montana outdoors and public access.
- We are thrilled that this project would secure significant permanent public hunting access on and through the property in a popular hunting district where game damage problems have become a significant issue on private lands.

³One group submitted comment via email and 2 members representing the group testified at the public hearing; the group is counted as 1 commenter.

- Various habitats on this property such as wetlands, grasslands and aspen stands are highly valuable to wildlife, and protecting these places also highly benefits the opportunities to hunt their inhabitants.
- Many of our respective organizations' members hunt in the areas adjacent to the proposed easement.
- Securing new public hunting access will open new sporting opportunities and access to the adjacent USFS lands for future generations to enjoy.
- Montanans are losing more and more opportunities to access land for hunting. This protects habitat for nongame wildlife in addition for hunting opportunities. This is a great opportunity for the state of Montana.

Response to Public Comment

The following comments encompass specific issues or suggestions received during the public comment period, along with FWP's responses.

Comment: Looks like smart purchase. Looks like wintering area for wildlife. Costs are not disclosed? Go for it if investment pens out financially! (Commenter 2).

FWP Response: FWP would incur no purchase costs in accepting the public-hunting access component of the CE. The assignment of the right of public hunting access to FWP would be integrated into our current hunting access program, which includes other public access areas in the Flint Creek area. Costs would therefore be indirect but would include some additional staff time to implement and monitor the public hunting access as well as respond to hunting and access issues that might arise during the hunting season on this property.

Comment: I note so many of the times the conservation easements are reported, very few if any reports by media inform any other access other than for hunting (Commenter 5.3). My question is this, does this include access for hiking? (Commenter 5.4).

FWP Response: The public access assignment to FWP by FVLT for this conservation easement covers access only for hunting purposes during designated hunting seasons. While some CEs in Montana do allow for public access for nonhunting recreation—and some allow recreational access that specifically excludes hunting—that access is determined collaboratively between the landowner and the public or nonprofit entity that will hold the CE on their land. FWP does seek opportunities to secure public access for activities other than hunting, but hunting access is unique because it is limited to a certain time of the year and occurs when FWP access managers and enforcement patrols are already active in the area. Additionally, hunting access is one of the main tools FWP uses to manage game populations.

Comment: I was born and raised in the Drummond/Hall area. This is the last person that needs a sum of \$700k + for a conservation easement. The rich getting richer. Why not just purchase land outright so it belongs to the state? All that will happen is money will flow to a rich guy, then he will continue to buy up more of the valley. Half the area he has does not have very good hunting. Waste of money. Not to mention, who would subdivide this area anyways? That is a far fetched idea.... Look at the boulder patch across the road. They have been trying to sell lots there for over 10 years. (Commenter 6).

FWP Response: The subjects of this comment are generally outside the scope of the proposal for FWP to accept delegation of public hunting access on the Buxbaum-Boulder Creek Ranch property. FVLT is the entity purchasing the CE on the property, and no FWP funds are included in that purchase. FWP only proposes to accept the hunting access portion of the CE to be held by FVLT. In the development of the proposed action, FWP consulted agency biologists and managers to determine if the value of the CE for hunting warranted FWP involvement. While FWP does not have specific information on past hunter numbers, numbers of game animals present, or hunting success on the proposed CE, the habitats present on the property and its position relative to tracts of public land suggest the Buxbaum Ranch will offer good hunting opportunities.

FINDING OF NO SIGNIFICANT IMPACT

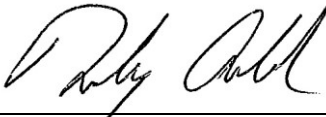
FWP has reviewed the EA and applicable laws, regulations, and policies and has determined that this action will not have significant effect on the physical or human environment. Therefore, I conclude that the EA is the appropriate level of analysis and the preparation of an Environmental Impact Statement is not necessary.

DECISION

This proposal received strong support from the public--in this MEPA process, as well as in the public process conducted by NRDP in advance of this MEPA process--with no one specifically expressing opposition to the action. FWP is the qualified organization best equipped to manage, monitor and enforce the public access terms in perpetuity, consistent with the overall intent of the FVLT conservation easement. FWP has long experience in acquiring and managing public access provisions in several perpetual conservation easements. Through the proposed conservation easement, hunting access would be available to the public in perpetuity on the Buxbaum-Boulder Creek Ranch.

No concerns were raised that would bring the environmental analysis into question, and in consideration of these facts and with this Decision Notice, I adopt the Draft EA as final.

Based on the analysis in the draft EA and the public comment received, I have selected the "Proposed Action" (Alternative B). I recommend to the Fish & Wildlife Commission that it approve FWP's proposed acceptance of the assignment of the public hunting access component of the Buxbaum-Boulder Creek Ranch from Five Valleys Land Trust under its proposed Conservation Easement.



Randy Arnold
Region 2 Supervisor
Montana Fish, Wildlife & Parks

1/29/2019
Date

APPENDIX. Compilation of all comments received (in their entirety) on the proposal for FWP to accept assignment (delegation) of the “right of public hunting access” component of a conservation easement (to be held by the Five Valleys Land Trust) on the Buxbaum-Boulder Creek Ranch, received by FWP during the comment period. Comments received via E = email, PM = public meeting. (If someone submitted comments more than once, the ID# for this person or group's successive comments are numbered as #a, #b, etc.)

| Com- men- ter # | Via | Para- graph | Comment |
|-----------------------|-----|----------------|---|
| 1 | E | 1 | I support Alternate B, to accept, the assignment of the rights of public hunting access on the Buxbaum Ranch from FVLT. I see no reason not to accept this gift of assignment, and lots of reason to accept it!!!! Good for everyone. |
| | | 2 | Thank You |
| 2 | E | | Look like smart purchase. Looks like wintering area for wildlife. Costs are not disclosed? Go for it if investment pens out financially! |
| 3 | E | | Great project! I am proud of the hard work all of these organizations and FWP have done to continue enhancing Montana outdoors and public access. |
| 4 | E | | I am in support of this permanent easement as it will assure public access and insure access to public land. I am recommending the partial use of NRDP monies to acquire this easement. |
| 5 | E | 1 | "Easement would provide access for hunting" was presented by the Missoulian today by writer Rob Chaney. |
| | | 2 | This appears to be a very good plan as garnered between the land owners and Five Valleys Land Trust---for hunting access. |
| | | 3 | I note so many of the times the conservation easements are reported, very few if any reports by media inform <u>any other access other than for hunting.</u> |
| | | 4 | My question is this, does this include access for hiking ? |
| 6 | E | | I was born and raised in the Drummond/Hall area. This is the last person that needs a sum of \$700k + for a conservation easement. The rich getting richer. Why not just purchase land outright so it belongs to the state? All that will happen is money will flow to a rich guy, then he will continue to buy up more of the valley. Half the area he has does not have very good hunting. Waste of money. Not to mention, who would subdivide this area anyways? That is a far fetched idea.... Look at the boulder patch across the road. They have been trying to sell lots there for over 10 years. |
| 7 | E | 0 | Please see the attached letter from the Montana Chapter of Backcountry Hunters & Anglers encouraging FWP to accept the public hunting access component of a conservation easement on the Buxbaum-Boulder Creek Ranch. |
| | | 1 | The Montana Chapter of Backcountry Hunters and Anglers highly encourages the Montana Department of Fish, Wildlife & Parks to accept the public hunting access component of a conservation easement on the Buxbaum-Boulder Creek Ranch. We are thrilled that this project would secure significant permanent public hunting access on and through the property in a popular hunting district where game damage problems have become a significant issue on private lands. The access to nearby USFS lands that would be gained by this project is an exceptional aspect for our members. Preventing the subdivision of this private property is of extremely high value, as well. The various habitats on this property such as wetlands, grasslands and aspen stands are highly valuable to wildlife and protecting these place also highly benefits the opportunities to hunt their inhabitants. |

| | | | |
|-----|----|---|--|
| | | 2 | The 2,000 MTBHA members advocate to protect large parcels of fish and wildlife habitat as well as the opportunity for traditional non-motorized hunting and fishing experiences. Our organization advocates for healthy, connected habitat for wildlife, open spaces, and the continuity of Montana's heritage of working lands. The primary benefits of this property are highly aligned with our organization's values. |
| | | 3 | Please inform us of any additional activity on this proposed project and how we might continue to support this and other such efforts. |
| 8 | E | 1 | <i>[Letter from Hellgate Hunters & Anglers]</i> Hellgate Hunters and Anglers, Anaconda Sportsmen's Club and the Montana Wildlife Federation represent hunters and anglers across the state of Montana. We appreciate the opportunity to comment on the Buxbaum-Boulder Creek Ranch conservation easement located in Granite County. |
| | | 2 | We are pleased to support this conservation easement as it will protect diverse wildlife habitat including important winter range for big game, native grasslands, forested draws, pocket wetlands, and aspen stands. We are also pleased that the easement will secure public hunting access in perpetuity on 1,193 acres that are also adjacent to other public lands. We fully support the department accepting the administering of public access hunting rights on a portion of the easement. |
| | | 3 | Many of our respective organizations' members hunt in the areas adjacent to the proposed easement. Securing new public hunting access will open new sporting opportunities and access to the adjacent USFS lands for future generations to enjoy. Thank you for the opportunity to comment on this proposed easement. |
| 9 | E | | <i>[Letter from Montana Wildlife Federation, same letter as #8]</i> |
| 10a | E | | <i>[Letter from Anaconda Sportsmen's Club, same letter as #8]</i> |
| 10b | PM | | [Public hearing commenter #1] The Club is in support of FWP taking assignment to manage this access. We support the access to game and maintenance of hunting values. |
| 10c | PM | | [Public hearing commenter #1] Always in full support of an easement like this in Anaconda and surrounding areas. We are out there fighting for everyone involved. We are supporting this to the utmost. |
| 11 | E | | I am writing to convey my support of the conservation/access easement. Montanans are losing more and more opportunities to access land for hunting. This protects habitat for nongame wildlife in addition for hunting opportunities. This is a great opportunity for the state of Montana. |